(1)

Supreme Court, U.S.
FILED
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NO.

IN THE

Supreme Court of the United States

RUSSELL E. LERMAN,

Petitioner,

v.

TOWNSHIP OF RANDOLPH, a municipal corporation of the State of New Jersey.
ANDREW T. SHAW, judge of the municipal court,
PATRICIAL M. LOBUR, court administrator,
CHRISTOPHER GUILIANI, police officer

Respondents,

On Petition For Writ Of Certiorari
To The Appellate Division Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the warrant clause of the Fourth Amendment strictly construed and its violation remedied under 42 U.S.C. § 1983 or is its interpretation and the remedy subject to a trial court judge's discretionary whims?

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF NEW JERSEY

Russell E. Lerman petitions for a Writ of Certiorari to review the decision of the Appellate Division of New Jersey entered on April 30, 1998. It affirmed various orders without opinion. It affirmed a summary judgment, whose papers were not served on the petitioner, which held that an arrest warrant was properly prepared and executed although not supported by a sworn complaint by a police officer nor did the respondent municipal court judge find probable cause to issue it. Also the respondent executing police officer refused petitioner's request to examine the patently bogus arrest warrant, but instead misrepresented the charges contained thereon on a cash bail receipt he signed and gave to the petitioner. This decision was timely appealed as of right to the Supreme Court of New Jersey. It was dismissed on March 24, 1999, without an opinion, apparently on the grounds that the said violation of the Fourth Amendment's warrant clause was not a question arising under the United States Constitution. A motion for reconsideration was denied on October 20, 1999.

OPINION BELOW

There were no opinions below.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

ORDERS

The petitioner instituted a claim under 42 U.S.C. § 1983 in the Law Division of Morris County stemming from the execution of a bogus arrest warrant on December 8, 1996.(App. 11) The complaint alleged several Fourth Amendment violations through the Fourteenth Amendment. (App. 1)Three of the respondents were personally served by the Morris County Sheriff's Office with the original and amended complaint on January 15, 1997, the last was personally served on January 17, 1997, all at the municipal building. The

respondents, represented by a liability insurance company, answered. (App. 5) Unbeknownst to the petitioner, the respondents moved for summary judgment on April 16, 1997 before the 150 day period to make discovery mandated under R.4:24-1 had expired. Nevertheless the trial court granted the motion on May 25, 1997 . The judge ruled, without documented justification, that the patently bogus arrest warrant was properly prepared and executed. (App. 12)

The petitioner moved the trial court on May 29, 1997, with a **sworn affidavit** and brief, to vacate the summary judgment **"on the grounds the plaintiff was never served with any motion for summary judgment"** (App. 14) The trial court judge denied the motion on July 7, 1997 without finding any facts to support his **naked** conclusion: (App. 16)

> "The court is satisfied that plaintiff has received adequate notice of all proceedings in this matter. Plaintiff's case is without merit. This action remains closed."

The trial court judge noted on the order that the motion was **opposed** (App. 17) although there were no opposing papers and a certification of service in the court record.

The petitioner then moved, without opposition, on July 17, 1997 with a supporting brief to again vacate the May 25, 1997 summary judgment (App. 18) :

> "on the grounds this court failed to comply with R.1:7-4 relative to R.R. 1:4-4, 1:5-1, 1:5-2, 1:5-3 and 4:46-1."

The trial court judge did not obey the mandate in R.1:7-4, which deals with findings of fact and conclusions of law. It clearly forbade **unsupported naked conclusions.** See *Cella v. Interstate Properties,*232 N.J.Super. (A.D . 1989). Exercising his discretion, the trial court judge ignored the petitioner's Fourth Amendment rights, R.1:7-4 through R. 4:46-2 and the law in the analogous case of *Slohoda v. United Parcel Service,* 193 N.J.Super. 586, 594 (A.D. 1984) which forbade the avoidance of Fourth Amendment claims and summarily denied this motion on August 23, 1997. (App.20)

The petitioner's Law Division complaint alleged that the respondent police officer Guiliani "unlawfully arrested plaintiff

without probable cause under the said arrest warrant in a private parking lot...."(App. 2,¶ 7) In a transcribed oral decision on March 11, 1997, pertaining to petitioner's abortive motion for partial summary judgment that is not within the scope of this petition but within R.4:30A, *Entire Controversy Doctrine,* the trial court judge made the following relevant unchallenged finding:(Tr. 16)

> " Then a good bit later a warrant was issued. And it wasn't served quickly but a good bit later, about a year later, I guess, when Mr. Lerman was going about his business, **I think coming out of a club** he--he was confronted by a policeman and put into handcuffs and--and taken off--arrested and taken to police headquarters and had a — a very unpleasant experience. **And that has resulted in this lawsuit**."

The bogus arrest warrant was issued on December 22, 1995. (App.11) Other Fourth Amendment constitutional torts alleged and totally ignored included a "pat down" body search (App. 2,¶ 12); automobile search (App. 2,¶ 11); handcuffing (App. 2, ¶ 10) and transporting the petitioner in a police vehicle to the municipal building where all of the municipal offices were housed (App. 2, ¶ 15); towing of petitioner's automobile out of the **private parking lot** of a tennis club where the petitioner was transacting business (App. 2,¶ 13); unlawful detention at the municipal building (App. 3, ¶ 23); refusal of respondent Guiliani to show the petitioner the arrest warrant after he procured it, which also violated New Jersey criminal court rule R. 3:3-3(c) (App. 2,¶ 19); posting of cash bail on the bogus arrest warrant totaling $186.00 (App. 3,¶ 20); and the retrieval of the automobile the following day with the help of friends from an impound yard in a nearby community after paying towing and storage fees of $131.04(App.3, ¶ 24).

The matter was timely appealed to the Appellate Division with the municipal court record that had been annexed to the respondents' summary judgment papers. These papers vindicated the petitioner's allegations in his complaint and rebutted the respondents' answers. In its decision the appellate court twisted the facts and not only it ignored the pleadings, (App, 1, 5) the municipal court record (App. 10, 11) and petitioner's argument concerning the constitutional torts

committed on December 8, 1996, it manufactured a fallacious account of the events on that day.(App. 23) As a result of this whitewash it affirmed the trial court's said orders without an opinion on April 30, 1998 under New Jersey court rule R. 2:11-3(e)(1)(E).(App. 22) The petitioner timely moved for reconsideration reemphasizing the municipal court record and its relevance to the Fourth Amendment constitutional tort argument that was clearly contained in the main brief. This was summarily denied on May 27, 1998. (App. 25)

The petitioner timely appealed to the Supreme Court of New Jersey based on Article 6, § 5 ¶1(a) of the state constitution, and *State v. Doyle,* 42 N.J. 334,337 (1964), ("Appeal as of right was taken to this Court under R.R. 1:2-1(a). The basis for resort to the rule was the **alleged violation of the Fourth Amendment**...") The petitioner argued that the court below ignored the aforesaid Fourth Amendment violations which were federal questions arising under the United States Constitution. The Court summarily dismissed the appeal on March 24, 1999 without an opinion. (App. 26) A motion for reconsideration was summarily denied on October 20, 1999. (App. 27)

AMENDMENT INVOLVED

Amendment IV-Searches and Seizures:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

The petitioner instituted a civil rights claim under 42 U.S.C.§ 1983 in the Law Division of Morris County, New Jersey on December 23, 1999. It alleged several Fourth Amendment violations that took place on December 8, 1996. See the description of these allegations in ORDERS supra.

The defendants in the Law Division were the Township of Randolph, a municipal corporation of the state of New Jersey, Andrew T. Shaw, judge of the municipal court, Patricia M. Lobur, court administrator, Christopher Guiliani, police officer.

The petitioner had been served on a rural road with traffic ticket D 12156 at 10:43 PM on October 29, 1995. The Randolph Township police officer, David Stokoe, alleged that the petitioner **purportedly** failed to observe a stop sign under N.J.S.A 39:4-144. (App. 11) The trial date set on the summons was November 1, 1995. This was facially defective because state law under municipal court rule R.7:6-4 allowed at least 5 days to prepare a defense, see also *Mullane v. Central Hanover Tr. Co,*339 U.S. 305, 339 (1949) ("the notice must ...afford a reasonable time to make their appearance") In *Re Gault,* 387 U.S. 1, 33 (1967) this Court required notice of a hearing on the merits to be given sufficiently in advance of scheduled court appearance to prepare a defense.

As a result the petitioner never **voluntarily** appeared in the municipal court. In New Jersey traffic violations are quasi criminal so the rules of criminal procedure attach. Therefore the municipal court did not acquire personal jurisdiction. In order to obtain personal jurisdiction an arrest warrant had to be executed and by force bring the petitioner into court.(App. 11)

Consequently on December 22, 1995 the municipal court issued an "arrest warrant," void on its face, to the Dover, New Jersey Police Department. (App. 11)It said:

> "You are hereby commanded to arrest the defendant whose name and address are shown below and bring him before this court to answer a complaint charging a violation in the jurisdiction of this court or hold the defendant to bail before an authorized official if the amount of bail is shown above."

The arrest warrant showed that bail was $186.00, the summons was D 12156, the warrant was 12156, the violation date was 10/29/85, the violation was **N.J.S.A. 39:4-144**. It also said "by order of the judge, Andrew T. Shaw." It did not show he found probable cause to issue it as required by state law.

The municipal court is an inferior court of limited jurisdiction. Its subject matter jurisdiction is delimited by constitutional and statutory

law. The bogus arrest warrant was issued far in excess of the thirty days after the alleged violation allowed by N.J.S.A.39:5-3. The court also lacked jurisdiction over the subject matter to issue it because of the Fourth Amendment warrant clause. This clause is implemented by criminal court rule R. 3:3-1(a) which says in part:

> "An arrest warrant on any complaint may be issued by a judge, clerk, municipal court administrator, or deputy court administrator ...**The arrest warrant** ..**may be issued only** if it appears to the judge, clerk or deputy clerk, municipal court administrator or deputy court administrator from the complaint or an affidavit or deposition that there is probable cause to believe that an offense was committed and that the defendant had committed it. The judge, clerk or deputy clerk, municipal court administrator or deputy court administrator who finds probable cause **shall note that finding on the face of the.....warrant."**

New Jersey criminal court rule R.3:2-1(a) says in pertinent part:

> "The complaint shall be a written statement of the essential facts constituting the offense charged. **All complaints**....**shall** be on oath or by certification before a judge or other person authorized by N.J.S.A. 2B:12-21 to take complaints."

See also *Giordenello v. United States of America,* 357 U.S. 480, 485 (1958).

The respondent Guiliani executed the "arrest warrant" on December 8, 1996. (App. 2,¶ 7) The petitioner paid the respondent $186.00 in cash for bail. (App. 3,¶ 20) The respondent **signed and furnished** the petiitioner a cash receipt (App. 3, ¶ 20, App. 10) (The respondents brazenly denied knowledge of the signed cash receipt in their answer to the complaint , see App. 6, ¶ 9, which was later annexed to their motion) Because the arrest warrant was patently bogus, the respondent Guiliani intentionally misled the petitioner about the charge in the arrest warrant. The receipt showed the arrest was for "**contempt**", which is governed by **N.J.S.A 2C:29-9**. Even if a warrantless arrest was effectuated it would have been illegal under N.J.S.A. 39:5-25 because the "contempt" could not have been committed in the respondent Guiliani's presence but only in the

presence of the respondent Shaw. See *State v. Scott,* 231 N.J.Super. 258(A.D. 1989) A further showing of bad faith was the refusal of the petitioner's request by respondent Guiliani to examine the arrest warrant, which precipitated the civil rights action. See allegation in petitioner's complaint, (App. 2, ¶ 19).

Within the time limits for discovery proceedings set by court rule, and after the court set a July trial date, **unbeknownst** to the petitioner, the respondents, represented by an insurance company attorney, moved for a summary judgment. It was granted on May 25, 1997.(App. 12) The judge, who also serves as the assignment judge of Morris County and the superior of respondent Shaw, knowing that the petitioner probably had not been served the motion papers, expeditiously ordered the case closed, which is reflected on the face of the order, and whimsically wrote on the order the following:(App. 13)

> **"The warrant for plaintiff's arrest was properly issued and properly executed. Plaintiff has no valid claim for relief"**

The municipal court record annexed to the respondents' motion papers, and not verified as required by court rule, clearly belies this statement .

1, The arrest warrant did not have a notation that respondent Shaw found probable cause to issue it. (App. 11)

2. It was not in fact supported by a sworn complaint, affidavit or deposition or any other sworn evidence by police officer Stokoe.

3. Respondent Shaw did not in fact find probable cause to issue it.

Additionally, summary judgment court rule R.4:46-5(a), which is the same as F.R.Civ.P. 56(e), states that "If the adverse party does not respond, summary judgment if appropriate shall be entered". The only basis for entering the judgment was to ignore the said court rules, the warrant clause in the Fourth Amendment and the other aforesaid unreasonable search and seizures prohibited by the Fourth Amendment.

The appellate court below affirmed the actions of the trial court judge without issuing an opinion. (App. 22) The only theory it could have followed was the judge, having discretionary powers, decided

not to enforce the petitioner's Fourth Amendment rights in order to immunize the respondents and the liability insurance company.

The respondent township is liable under the law in *City of St. Louis v. Praprotnik,* 485 U.S. 112, 123 (1988); *Pembaur v. Cincinnati,* 475 U.S. 469, 481(1986). Respondent Shaw was an employee of the township. He was hired and paid by it out of municipal court proceeds. This is evident under N.J.S.A. 2B12-4(b) *Judge of municipal court; term of office ; appointment.*. He was the final policy maker in respect to the issuance of the bogus arrest warrant. This act triggered the events described supra and caused the illegal seizure of petitioner's driving privileges. The petitioner was never convicted of the purported violation and had not been afforded a predeprivation **administrative** hearing in a non emergency situation,(App. 3,¶ 25) which violated the teachings of this Court.

Respondent Shaw, a judge of an inferior court of limited jurisdiction, is liable under the law in *Stump v. Sparkman,* 435 U.S. 348, 357 (1978). The rules of court, having statutory power, and the Fourth Amendment clearly circumscribed his power and jurisdiction over the subject matter of the arrest warrant before him. The issuance of the arrest warrant was a clear judicial usurpation which cannot be condoned by any grant of immunity. See also *Maestro v. Jutkofsky,* 860 F.2d 50, 54 (2d Cir. 1988)

Respondent Lobur is also equally liable under *Stump*, supra. She bore the responsibility for disseminating the patently bogus arrest warrant.

Respondent Guiliani is liable under 42 U.S.C. § 1983. See *Buranen v. Hanna,* 623 F.Supp. 445, 448 (D.C.Minn. 1985) where two arrestees brought civil rights action against arresting officers. ("Plaintiffs, moreover, can clearly maintain a section 1983 action for being arrested without probable cause.") Also he is not immune under the qualified immunity doctrine. He knowingly executed a facially invalid arrest warrant **he had in his possession**.(App. 2, ¶ 19) It was not executed in good faith and with probable cause of which he had knowledge under the "collective knowledge rule" shown in *Whitely v. Warden, Wyoming State Penitentiary,* 401 U.S. 560, 568 (1971). See also *United States v.Leon* , 468 U.S. 897, 923 (1984).("it is clear in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued")

REASON FOR GRANTING THE WRIT

The Appellate Division's decision grossly violated the Fourth Amendment and the teachings of this Court. Its ruling extinguished the warrant clause mandate and replaced it with unsupported judicial discretion.

This case should be fully explored to avoid similar occurrences where a state judiciary would ignore a series of its own court rules and the Constitution of the United States of America in order to protect an insurance company from a damage claim under the Civil Rights Act.

CONCLUSION

On the basis of the foregoing argument, and the reasons set forth, I respectively request that this Court grant its Writ of Certiorari.

Respectively submitted,

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MORRIS COUNTY

RUSSELL E. LERMAN)
plaintiff)
v.)
)
TOWNSHIP OF)
RANDOLPH, a)
municipal corporation)
of the State Of New)
Jersey; ANDREW T.)
SHAW, judge of the)
municipal court;)
PATRICIA M. LOBUR)
Court administrator;)
CHRISTOPHER)
GUILIANI, police officer)
defendants)

Superior Court of New Jersey
Law Division
Morris County
Dkt. No. MRS-L-4202- 96PW

Civil Action
AMENDED COMPLAINT IN
LIEU OF PREROGATIVE WRIT

The plaintiff, Russell E. Lerman, a citizen of Morris County, New Jersey for his complaint against the defendants above alleges as follows:

FACTUAL BACKGROUND

1. Proceedings were instituted in the municipal court by Police Officer Davis Stokoe on October 29, 1995 under Traffic Ticket No. D 122156 alleging a minor traffic violation, i.e. failure to stop, N.J.S.A 39:4-144.

2. The said traffic ticket had a court hearing date of November 1, 1995.

3. The plaintiff did not appear in the municipal court.

4. On December 22, 1995 defendant Lobur issued an arrest warrant purportedly under court rule R.7:6-3(b).

5. On January 31, 1996 the municipal court prepared a "Scheduled Suspension" order effective on March 29, 1996 to suspend plaintiff's driver's license. This was issued from Trenton

fraudulently representing this action as a state administrative determination.

6. The plaintiff timely appealed this order to the Appellate Division and was docketed on March 13, 1996 as No. A-3965-95.

7. On December 8, 1996 defendant Guiliani **unlawfully arrested plaintiff without probable cause under the said arrest warrant** in the private parking lot at the Randolph Hills Tennis Club, Mount Freedom at 5:56 PM.

8. Plaintiff told defendant Guiliani there were no outstanding arrest warrants against his person.

9. The arrest took place in full view of plaintiff's many friends and acquaintances causing great embarrassment and humiliation.

10. Defendant Guiliani handcuffed plaintiff and was physically placed into the rear seat of a police vehicle which was approximately 15 feet from plaintiff's vehicle.

11. Without probable cause defendant Guiliani searched plaintiff's vehicle.

12. Defendant Guiliani then ordered plaintiff out of the police vehicle and without probable cause conducted a complete body pat down search.

13. Defendant Guiliani told plaintiff that his vehicle would be towed out of the private parking lot by an authorized police tow operator.

14. The plaintiff is suffering severe emotional distress from these **unlawful** actions.

15. The plaintiff was driven by defendant Guiliani to the municipal building. The plaintiff was then guided into a room in police headquarters.

16. Defendant Guiliani interrogated the plaintiff. A lively conversation then broke out.

17. Plaintiff told Guiliani the matter was being appealed in the Appellate Division, and **he had no knowledge of any outstanding arrest warrants.**

18. Plaintiff requested that he post bail.

19. Defendant Guiliani left the room and returned with the December 22, 1995 arrest warrant. Defendant Guiliani could not decide whether it was a Randolph or a Dover arrest warrant. **Defendent Guiliani refused plaintiff's request to examine the warrant.**

20. Plaintiff paid $186.00 in cash to satisfy the bail. **A receipt was obtained.**

21. Plaintiff complained about the pain to his wrists because of being handcuffed.

22. Defendant Guiliani issued three traffic tickets without probable cause. Their numbers were E-3407, -8, -9.

23. The plaintiff then left the municipal building at 7:16PM.

24. The towing cost $131.05.

25. On December 16, 1996 the plaintiff was made aware by cognizant state personnel that his driver's license was ordered suspended by the municipal court.

COUNT 1

26. Plaintiff repeats the allegations of paragraph 1 through 25 above as if set forth here in length.

27. The Township of Randolph, and its municipal court and police, under color of state law, illegally deprived plaintiff of his constitutional rights under the Fourt, Fifth and Fourteenth Amendment of the United States Constitution and is actionable under 42 U.S.C. § 1983.

COUNT 2

28. Plaintiff repeats the allegations of paragraph 1 through 25 above as if set forth here in length.

29. The Township of Randolph and its municipal court and police, are liable for damages under the New Jersey Tort Claims Act.

30. This complaint serves the 90 day notification requirement under N.J.S.A. 59:8-8.

COUNT 3

31. Plaintiff repeats the allegations of paragraph 1 through 25 above as if set forth here in length.

WHEREFORE , plaintiff demands judgment against defendant Township of Randolph for:

1. compensatory damages;

2. interest;
3. costs and attorney fees;
4. such other relief as the court shall deem just and proper.

COUNT 4

32. Plaintiff repeats the allegations of paragraphs 1 through 25 above as if set forth here in length.

WHEREFORE, plaintiff demands judgment against defendants Shaw, Labur and Guiliani, severally for:

1. compensatory damages;
2. punitive damages;
3. interest;
4. cost and attorney fees; and
5. such other relief as the court shall deem just and proper.

COUNT 5

33. Plaintiff repeats the allegations of paragraph 1 through 25 above as if set forth here in length.

WHEREFORE, plaintiff demands relief against defendants Shaw and Lobur as follows:

1. ordering the license suspension action taken under Traffic Ticket D 12156 as null and void under state and federal law;
2. compensatory damages;
3. punitive damages;
4. attorney fees;
5. costs;
6. such other relief as this court deem just and proper.

COUNT 6

34. Plaintiff repeats the allegations of paragraph 1 through 25 above as if set forth here in length.

WHEREFORE, plaintiff demands that Traffic Tickets D-12156, E-3407, -8, -9 be quashed for being fatally defective.

Dated: January 14, 1997

_____

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MICHAEL J. ARNOLD
MORRIS COUNTY

RUSSELL E. LERMAN Plaintiff	Superior Court of New Jersey
v.	Law Division
	Morris County
	Dkt. No. MRS-L-4204- 96PW
TOWNSHIP OF RANDOLPH, a Municipal Corporation of the State Of New Jersey; ANDREW T. SHAW, Judge of the Municipal Court; PATRICIA M. LOBUR Court Administrator; CHRISTOPHER GUILIANI, Police Officer Defendants	CIVIL ACTION ANSWER TO COMPLAINT

Defendants, Township of Randolph, Andrew T. Shaw, Patricia M. Lobur and Christopher Guiliani, hereinafter referred to as Randolph, by way of Answer to the complaint, hereby say as follows:

FACTUAL BACKGROUND

1. These defendants admit the allegations contained in Paragraphs 1,2,3 and 4 of the Factual Background of the Complaint.

2. These defendants deny the allegations contained in Paragraphs 5,6 and 7 of the Factual Background of the Complaint .

3. These defendants have insufficient knowledge upon which to form a belief as to the allegations contained in Paragraphs 8, 9 and 10 of the Factual Background of the Complaint.

4. These defendants deny the allegations contained in Paragraphs 11 and 12 of the Factual Background of the Complaint.

5. These defendants have **insufficient knowledge** upon which to form a belief as to the allegations contained in **Paragraph 13** of the Factual Background of the Complaint.

6. These defendants deny the allegation contained in Paragraph 14 of the Factual Background of the Complaint.

7. These defendants admit the allegations contained in Paragraphs 15 and 16 of the Factual Background of the Complaint.

8. These defendants deny the allegations contained in Paragraphs 17, 18 and 19 of the Factual Background of the Complaint.

9. These defendants have **insufficient knowledge** upon which to form a belief as to the allegations contained in **Paragraph 20** of the Factual Background of the Complaint.

10. These defendants deny the allegations contained in Paragraph 21 of the Factual Background of the Complaint.

11. These defendants **admit** the allegations contained in **Paragraph 22** of the Factual Background of the Complaint.

12. These defendants have insufficient knowledge upon which to form a belief as to the allegations contained in Paragraphs 23, 24 and 25 of the Factual Background of the Complaint.

COUNT 1

13. These defendants repeat their answers contained in the Factual Background of the Complaint as if set forth at length herein.

14. These defendants deny the allegations contained in Paragraph 27 of Count 1 of the Complaint.

COUNT 2

15. These defendants repeat their answers contained in the Factual Background and Count 1 of the Complaint as if set forth at length herein.

16. These defendants deny the allegations contained in Paragraphs 29 and 30 of Count 2 of the Complaint.

COUNTS 3 - 6

17. These defendants do not respond to Counts 3 through 6 of the Complaint as there are no allegations contained therein and simply a demand for damages.

FIRST SEPARATE DEFENSE

The complaint and each and every count thereof fails to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Defendant, Randolph, are immune from liability pursuant to the provisions of the New Jersey Tort Claims Act, specifically, N.J.S.A. 59:2-1, et seq.

THIRD SEPARATE DEFENSE

Defendant, Randolph, are immune from liability pursuant to the specific immunities from liability pursuant to the specific immunities provided in the New Jersey Tort Claims Acting, including but not limited to immunity for their enforcement of any law pursuant to the provisions of N.J.S.A. 59:3-3 or institution of prosecution of judicial or administrative proceedings within the scope of their employment pursuant to N.J.S.A. 59:3-8.

FOURTH SEPARATE DEFENSE

Any action of the part of the individual answering defendants was in the nature of a good faith execution or enforcement of the laws within the meaning of the specific immunity provided by

N.J.S.A. 59:3-3 and, accordingly, no liability may be imposed on these defendants.

FIFTH SEPARATE DEFENSE

Defendants are immune from liability for damages and have the additional defenses set forth in the New Jersey Tort Claims Act. N.J.S.A. 59:1-1 et seq., including but not limited to the provisions barring prejudgment interest, punitive damages, exemplary damages, certain pain and suffering damages and duplicate damages under N.J.S.A. 59:9-2.

SIXTH SEPARATE DEFENSE

Any force used by the defendant police officer did not rise to the level of a statutory violation and, therefore, plaintiff did not suffer any infringement or deprivation of a right guaranteed to him by any state statute.

SEVENTH SEPARATE DEFENSE

Any of the injuries of which plaintiff complains result in whole or in part from the wrongful, reckless and negligent or criminal conduct of plaintiff or that of others over whom these defendants had no control, and as such, plaintiff's injuries are not the responsibility of any of the defendants.

EIGHTH SEPARATE DEFENSE

The action and conduct of the defendant police officer, to the extent they occurred as alleged, were objectively reasonable under the circumstances and, thus, defendant police officer holds a qualified immunity from liability for all claims asserted in this action.

NINTH SEPARATE DEFENSE

The actions and conduct of defendants did not violate any clearly established state statutory right of which those defendants

should have been aware and, thus, defendants, in their capacity as municipal officials, employees and police officers, are entitled to absolute immunity in relation to plaintiff's claim.

TENTH SEPARATE DEFENSE

Plaintiff's guilty finding after judicial proceedings on the merits to the charges upon which he was arrested, notwithstanding what happened on appeal, demonstrate that the defendant police officer acted in good faith and upon probable cause with respect to all actions taken in relation to this plaintiff and, accordingly, the defendant police officer is immune from all liability to plaintiff.

ELEVENTH SEPARATE DEFENSE

Plaintiff's claim is barred in whole or in part by comparative or contributory negligence, estoppel and waiver.

TWELTH SEPARATE DEFENSE

The actions and conduct of the defendants and each of them to the extent they occurred as alleged, were undertaken in the good faith performance of their official duties, without malice and were, therefore, privileged under applicable state law.

DESIGNATION OF TRIAL COUNSEL

John H. Dorsey, Esq. Is hereby designated as trial counsel for defendant, Randolph.

DORSEY AND FISHER, ESQS.
ATTORNEYS FOR DEFENDANTS,
TOWNSHIP OF RANDOLPH,
ANDREW T. SHAW, PATRICIA
M. LOBUR, AND CHRISTOPHER
GUILIANI

Dated: February 26, 1997

JOHN H. DORSEY, ESQ.

Township of Randolph
MORRIS COUNTY, N.J.

MUNICIPAL COURT RECEIPT

Ticket No D12156 Docket No._____

STATE OF NEW JERSEY
vs.

Russel E Lerman
Defendant

Received of Russel E Lerman
Address 14 Almara trail
Hopatcong NJ

the sum of One hundred Eighty six **dollars**
($ 186.00 **)** for_____

Fine_____ **Cost**____ **EMT**_____ **ATS**_____
Contempt x **VCCB** ____ **Appl.**____ **CD**_____
DWI Surcharge_____ **Uninsured**_____ **DEDR**_____

Lab Fee _____ **SNSF**_____ **POAA**_____
Other _____

Partial Payment_____ **Balance** _____
Paid in Full_____

x **Cash** __ **Check** __ **Money Order**

Court Appearance Will Call Court **Dated** 12-8-96

ptl Christopher Guiliani
Court Administrator/Deputy

N0 03497

MUNICIPAL COURT OF RANDOLPH TWP MUNICIPAL COURT
502 MILLBROOK AVE
RANDOLPH NJ 07869

WARRANT

POLICE DEPARTMENT DOVER POLICE DEPT
37 NORTH SUSSEX
DOVER NJ 07801

STATE	REGISTRATION	VIOLATION DATE	DATE WARRANT ISSUED	BAIL	SUMMONS NO	WARRANT NO
NJ	FTI 39V	10 29 95	12 22 95	NO 10% 186.00	D12156	12156

DRIVERS LIC # L27126806505365 DATE OF BIRTH 05/17/36 EYE COLOR HAZEL
VIOLATION 39:4-144

To any police officer: (See INSTRUCTIONS on reverse side)
You are hereby commanded to arrest the defendant whose name and address are shown below and bring him before this court to answer a complaint charging a violation in the Jurisdiction of this Court or hold the defendant to bail before an authorized official if the amount of bail is shown above.

RUSSELL E. LERMAN
P.O. BOX 451
DOVER NJ 07802-0451

BY ORDER OF THE JUDGE
ANDREW T. SHAW
OFFICE HOURS 8:30AM - 9:30PM
TELEPHONE 201 989 7054

APP. 11

DORSEY AND FISHER, ESQS.
714 Main Street, P.O. Box 228
Boonton, New Jersey 07005
(201) 334-1900
Attorneys for the Defendants,
Township of Randolph,
Andrew T. Shaw, Patricia
M. Lobur, Christopher Guiliani

FILED
MAY 25 1997
Reginald Stanton, A.J.S.C.

THIS PLEADING CLOSES THE CASE

RUSSELL E. LERMAN) Plaintiff,) v.)	Superior Court of New Jersey Law Division Morris County Dkt. No. MRS-L ~~4204~~-96PW 4202-96PW
TOWNSHIP OF RANDOLPH, a Municipal Corporation of the State Of New Jersey; ANDREW T. SHAW, Judge of the Municipal Court; PATRICIA M. LOBUR Court Administrator; CHRISTOPHER GUILIANI, Police Officer Defendants,)	CIVIL ACTION ORDER FOR SUMMARY JUDGMENT

This matter brought before this Court by Peter J. King, Esq., of the firm of Dorsey and Fisher, Esq., attorneys for the defendants, Township of Randolph, Andrew T. Shaw, Patricia M. Lobur and Christopher Guiliani, and the court having considered the pleadings filed in this action together with the Certification and Brief; and the Court having heard the oral argument of counsel and being of the opinion that the Complaint filed in this matter should be dismissed, as there are no genuine issues as to any material fact and the Complaint contains no viable action against the Township of Randolph;

IT IS ON THIS 25 day of May, 1997,

ORDERED and ADJUDGED that the Complaint filed by the plaintiff against the defendants, Township of Randolph, Andrew T.

Shaw, Patricia M. Lobur and Christopher Guiliani is hereby dismissed *.with prejudice.*

Unopposed except by prior filings which has been considered
RS..A J S Cc

Reginld Stanton
Reginald Stanton
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

The warrant for plaintiff's arrest was properly issued and properly executed. Plaintiff has no valid claim for relief.

Reginald Stanton
REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

This court is mailing a copy of this order to Mr. Lerman and to Mr. Dorsey.

RS. AJSC

RUSSELL E. LERMAN
P.O. Box 451
Dover, NJ 07802
(201) 989-1380
Attorney Pro Se

RECEIVED & FILED
DEPUTY CLERK
SUPERIOR COURT
MAY 29 1 43 PM '97
MICHAEL J. ARNOLD
MORRIS COUNTY

RUSSELL E. LERMAN)
plaintiff)
v.)
)
TOWNSHIP OF)
RANDOLPH, a)
municipal corporation)
of the State Of New)
Jersey; ANDREW T.)
SHAW, judge of the)
municipal court;)
PATRICIA M. LOBUR)
court administrator;)
CHRISTOPHER)
GUILIANI, police officer)
defendants)

Superior Court of New Jersey
Law Division
Morris County
Dkt. No. MRS-L-4202- 96PW

Civil Action
NOTICE OF MOTION
TO VACATE JUDGMENTS

TO: John H. Dorsey, Esq.
714 Main Street
P.O. Box 228
Boonton, NJ 07005-0228

Take Notice That on Friday the 27th day of June, 1997 at 9 O'clock in the forenoon, or as soon thereafter as plaintiff may be heard, plaintiff in the above entitled action shall move pursuant to R.4:49-2, R.1:5-1 and R. 1:5-2 before Reginald Stanton, J.S.C. Superior Court of New Jersey, Law Division, at the Court House in the City of Morristown, New Jersey, to vacate the judgment filed on May 25, 1997 in favor of the defendant's for summary judgment on the grounds the plaintiff was never served with any motion for summary judgment, and to vacate the order filed on April 8, 1997 denying plaintiff's Motion for partial Summary

Judgment on the grounds plaintiff was never served under R.4:42-1(c) a proposed form of order pertaining to the order dated and filed on April 5, 1997 nor was the plaintiff served the signed order under R. 1:5-1.

On said motion plaintiff will rely on papers on file and the **Affidavit** annexed herein.

ORAL ARGUMENT

Plaintiff does not request Oral Argument.

Dated: May 29, 1997

Russell E. Lerman

Russell E. Lerman, Pro Se

RUSSELL E. LERMAN
P.O. Box 451
Dover, NJ 07802
(201) 989-1380
Attorney Pro Se

RECEIVED & FILED
DEPUTY CLERK
SUPERIOR COURT
Jul 9 4 32 PM '97
MICHAEL J. ARNOLD
MORRIS COUNTY

RUSSELL E. LERMAN) plaintiff)
v.)
)
TOWNSHIP OF RANDOLPH, a municipal corporation of the State Of New Jersey; ANDREW T. SHAW, judge of the municipal court; PATRICIA M. LOBUR court administrator; CHRISTOPHER GUILIANI, police officer) defendants)

Superior Court of New Jersey
Law Division
Morris County
Dkt. No. MRS-L-4202- 96PW

Civil Action
~~ORDER TO VACATE JUDGMENT~~
Order Denying Motion
RS.AJSC

This matter being opened to the Court upon the application of the plaintiff , on motion returnable June 27, 1997 for an order to vacate the judgment in favor of the defendant filed on April 8, 1997 and May 25, 1997; and the Court having considered the motion and good cause appearing; *the motion*

It is on this *7* day of June, 1997 ORDERED that ~~the order~~ *to vacate the judgment is denied. The previous order* ~~filed on May 25, 1997 be vacated.~~ *entered by the Court in this action remains in force.*

It is ~~further ORDERED that the order filed on April 8, 1997 be vacated to allow plaintiff to submit~~ any objections to its form. *The Court is satisfied that plaintiff has received*

adequate notice of all proceedings in this matter. Plaintiff's case is without merit. This action remains closed. RS.AJSC *Reginald Stanton* J.S.C.

REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

(x) opposed
( ) unopposed

Note: The Court is mailing a copy of this Order to Mr. Lerman and to Mr. Dorsey . RS.AJSC

RUSSELL E. LERMAN
P.O. Box 451
Dover, NJ 07802
(201) 989-1380
Attorney Pro Se

RECEIVED & FILED
DEPUTY CLERK
SUPERIOR COURT
JUL 18 2 22PM '97
MICHAEL J. ARNOLD
MORRIS COUNTY

RUSSELL E. LERMAN)
plaintiff)
v.)
)
TOWNSHIP OF)
RANDOLPH, a)
municipal corporation)
of the State Of New)
Jersey; ANDREW T.)
SHAW, judge of the)
municipal court;)
PATRICIA M. LOBUR)
court administrator;)
CHRISTOPHER)
GUILIANI, police officer)
defendants)

Superior Court of New Jersey
Law Division
Morris County
Dkt. No. MRS-L-4202- 96PW

Civil Action
NOTICE OF MOTION
TO VACATE

TO: John H. Dorsey, Esq.
714 Main Street
P.O. Box 228
Boonton, NJ 07005-0228

Take Notice That on Friday the 8th day of August, 1997 at 9 O'clock in the forenoon, or as soon thereafter as plaintiff may be heard, plaintiff in the above entitled action shall move puruant to R. 4:4:49-2, before Reginald Stanton, J.S.C. Superior Court of New Jersey , Law Division, at the Court House in the city of Morristown, New Jersey, to vacate the order filed on July 8, 1997 denying plaintiff's motion to vacate the 8interlocutory order filed on April 8, 1997 and summary judgment filed on May 25, 1997 on the grounds this court failed to comply with R.1:7-4 relative to R.R. 1:4-4, 1:5-1, 1:5-2, l:5-3 and 4:44-1.

On said motion plaintiff will rely on papers on file and the letter brief annexed herein.

ORAL ARGUMENT

Plaintiff does not request Oral Argument.

Dated: July 17, 1997

Russell E. Lerman

Russell E. Lerman, Pro Se

RUSSELL E. LERMAN
P.O. Box 451
Dover, NJ 07802
(201) 989-1380
Attorney Pro Se

RECEIVED & FILED
DEPUTY CLERK
SUPERIOR COURT
AUG 28 11 24AM '97
MICHAEL J. ARNOLD
MORRIS COUNTY

RUSSELL E. LERMAN)
plaintiff)
v.)
)
TOWNSHIP OF)
RANDOLPH, a)
municipal corporation)
JUDGMENT)
of the State Of New)
Jersey; ANDREW T.)
SHAW, judge of the)
municipal court;)
PATRICIA M. LOBUR)
court administrator;)
CHRISTOPHER)
GUILIANI, police officer)
defendants)

Superior Court of New Jersey
Law Division
Morris County
Dkt. No. MRS-L-4202- 96PW

Civil Action
~~ORDER TO VACATE~~ JUDGMENT

Order Denying Motion
RS.AJSC

This matter being opened to the Court upon the application of the plaintiff , on motion returnable August 8, 1997 for an order to vacate the orders in favor of the defendant filed on April 8, 1997 and May 25, 19977; and July 8, 1997 ; and the Court having considered the motion and good cause appearing;

It is on this *23* day of August, 1997 ORDERED that the ~~orders filed on April 8, 1997, May 25, 1997 and July 8, 1997 be~~ vacated. *motion is denied RS.AJSC.*

Reginald Stanton J.S.C.
REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

( ) opposed
(x) unopposed

Plainiff's case is totally without merit and it has long since been disposed of at the trial court level. There will be no further proceedings at the trial court level.

RS AJSC **REGINALD STANTON**
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-385-97T2

RUSSELL E. LERMAN
Plaintiff-Appellant'

v.

TOWNSHIP OF RANDOLPH,
ANDREW T. SHAW,
PATRICIA M LOBUR,
CHRISTOPHER GUILIANI,
Defendants-Respondents,

Submitted April 22, 1998 - Decided **APR 30 1998**
Before Judges D'Annunzio, A.A. Rodriquez and Coburn

On appeal from Superior Court of New Jersey, Law Division, Morris County

Russell E. Lerman, appellant pro se

Dorsey and Fisher, attorneys for respondents (John H. Dorsey, of counsel; Peter J. King, on the brief)

PER CURIAM

This civil action arose from the issuance of a summons to plaintiff in the Township of Randolph for failure to stop or yield in violation of N.J.S.A. 39:4-144. The summons was issued on October 29, 1995, and was returnable on November 1, 1995. The plaintiff did not appear in the municipal court on the return date. As a result, the court mailed a notice to plaintiff rescheduling the matter for November 29, 1995. The plaintiff failed to respond and

a warrant was issued for his arrest. Based on those events, on January 30, 1996, the Director of Motor Vehicles sent plaintiff a notice of suspension effective March 29, 1996, unless plaintiff appeared in court to satisfy the original summons. On December 8, 1996, plaintiff **was arrested in Randolph for driving a motor vehicle while his license was suspended and for careless driving.**

Plaintiff filed the complaint which is the subject of this appeal on December 23, 1996. The complaint asserts various causes of action seeking damages from the defendants. The **complaint rests entirely on the theory that the municipal court never obtained jurisdiction over the plaintiff** because the return date of the original summons was less than five days from its issuance in violation of R. 7:6-4.

On May 25, 1997, Judge Stanton granted the defendants' motion for summary judgment. Plaintiff appeals based on the following point headings.

POINT I

FAILURE TO SERVE PLAINTIFF TRAFFIC TICKET D 12156 AT LEAST 5 DAYS BEFORE THE DATE SET FOR TRIAL AS MANDATED UNDER R. 7:6-4 WAS A FATAL DEFECT AND DID NOT CONFER IN PERSONAM AND SUBJECT MATTER JURISDICTION UPON THE MUNICIPAL COURT THEREFORE ALL ACTIONS TAKEN UNDER THAT TICKET WAS NULL VOID.

POINT II

FAILURE TO SERVE PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT RENDERED THE JUDGMENT GRANTED BY THE COURT BELOW NULL AND VOID

POINT III

THE COURT BELOW DENIED PLAINTIFF'S MOTIONS TO VACATE DEFENDANT'S JUDGMENT BECAUSE PLAINTIFF PURPORTEDLY HAD NO MERITORIOUS CLAIM WHICH IS CONTRADICTED BY THE FILINGS IN THE RECORD BELOW AND CONSTITUTES EGREGIOUS ERROR WHICH SHOULD BE REVERSED

After **carefully considering** the **record** and the briefs, we are satisfied that all issues of law raised are clearly without merit and that an opinion would have no precedential value. R. 2:11-3(e)(1)(E). We affirm for that reason and, essentially, for the reasons set forth in the **oral** and **written opinions** issued by Judge Stanton on **MARCH 11, 1997**, April 5, 1997, May 8, 1997, **MAY 25, 1997**, July 9, 1997, and August 23, 1997.

Affirmed.

RUSSELL E. LERMAN
VS
TOWNSHIP OF
RANDOLPH ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000385-97T2
MOTION NO. M-005788-97
BEFORE PART: H
JUDGE(S) D'ANNUNZIO
RODRIGUEZ
COBURN

MOTION FILED: MAY 11, 1998 BY: RUSSELL E. LERMAN
ANSWER(S) FILED:

FILED
APPELLATE DIVISION
MAY 27 1998
R. Emile Cox
Clerk

SUBMITTED TO COURT: MAY 20, 1998

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COUT, IT IS ON THIS 21st DAY of MAY. 1998, HEREBY ORDERED AS FOLLOWS:

GRANTED	DENIED	OTHER
( )	(xx)	( )

MOTION BY APPELLANT
FOR RECONSIDERATION
SUPPLEMENTAL:

I hereby certify that the foregoing is a true copy of the original on file in my office
R. Emile Cox
Clerk

MRS L-4202-96PW

FOR THE COURT:
WMDA
WILLIAM M. D'ANNUNZIO J.A.D.

SUPREME COURT OF NEW JERSEY
A-24 September Term 1998
46,371

RUSSELL E. LERMAN
Plaintiff-Appellant

v.

ORDER

TOWNSHIP OF RANDOLPH, etc., et al .,
Defendants-Respondents

FILED
MAR 24 1999
Stephen W. Townsend
CLERK

This matter having come before this Court on appeal as of right pursuant to Rule 2:2-1(a)(1), and the Court having determined that the matter does not present a substantial constitutional question within the meaning of the Rule or applicable caselaw;

It is ORDERED that the within appeal is dismissed.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 23rd day of March 1999.

Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-207 September Term 1998
46,371

RUSSELL E. LERMAN
Plaintiff-Appellant

v. ORDER

TOWNSHIP OF RANDOLPH, etc., et al .,
Defendants-Respondents

FILED
OCT 20 1999
Stephen W. Townsend
CLERK

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 19th day of October, 1999.

Stephen Townsend
CLERK OF THE SUPREME COURT